

**HOUSE . . . . . No. 4484**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Colleen M. Garry and Edward J. Kennedy***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the position of Town Manager in the town of Tyngsborough.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/17/2022</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>2/17/2022</i>

**HOUSE . . . . . No. 4484**

By Representative Garry of Dracut and Senator Kennedy, a joint petition (accompanied by bill, House, No. 4484) of Colleen M. Garry and Edward J. Kennedy (by vote of the town) that the town of Tyngsborough be authorized to establish the position of town manager in said town. Municipalities and Regional Government. [Local Approval Received.]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act establishing the position of Town Manager in the town of Tyngsborough.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. There is hereby established in the town of Tyngsborough the office of town  
2 manager to be appointed by majority vote of the full Tyngsborough board of selectmen to serve  
3 for a term of not more than 3 years. The board shall fix the compensation for such person,  
4 annually, within the amount appropriated by the town. The town manager shall be appointed on  
5 the basis of educational, executive, and administrative qualifications and experience. At least 3  
6 months prior to the expiration of any contract term, the board of selectmen shall vote on whether  
7 to reappoint the town manager, and such reappointment shall be by majority vote of the full  
8 board, provided, however, that that the provisions of section 8 of this act shall not apply to such  
9 vote. To be eligible for appointment, the town manager shall not have served in an elective town  
10 office in Tyngsborough for at least 12 months prior to appointment. The town manager shall  
11 devote full time to the office and shall not, unless approved in advance by the board of

12 selectmen, hold any other public office, elected or appointed, unless in an ex officio capacity, nor  
13 engage in any business or occupation during such service.

14 SECTION 2. The board of selectmen shall provide for an annual review of the job  
15 performance of the town manager based upon the duties of the manager listed in Section 3 of this  
16 act, a summary of which shall be prepared and be a public record. Failure to administer an  
17 annual review shall not prohibit the board of selectmen from authorizing any annual increase in  
18 compensation.

19 SECTION 3. The town manager shall be the chief administrative officer of the town,  
20 directly responsible to the board of selectmen for the administration of all town affairs for which  
21 the office of town manager is given responsibility by this act. The town manager shall supervise,  
22 direct and be responsible for the efficient administration of all functions and activities for which  
23 the office of town manager is given authority, responsibility or control by this act, by-law, town  
24 meeting vote, or vote of the board of selectmen, including but not limited to the following:

25 A. To appoint, and in appropriate circumstances remove, subject to any applicable  
26 collective bargaining agreement, personnel by-law or employment contract, an assistant town  
27 manager, department heads, officers, agents, and other employees of the town for whom no other  
28 method of selection or removal is provided by this act, other than those under the jurisdiction of  
29 the school committee and the board of library trustees, and shall forthwith give written notice of  
30 such appointment to the board of selectmen and the respective board or department; provided,  
31 however, that appointment of agents of appointed or elected multiple-member bodies, or of  
32 department heads for departments for which an appointed or elected board provides policy

33 direction, shall be made only after consultation with the respective appointed or elected multiple-  
34 member body.

35 i. All appointments of department heads and multiple-member bodies made under  
36 section 3(A) of this act shall become effective on the 15th day following the day on which such  
37 notice of appointment is filed with the board of selectmen, unless the board shall, within that  
38 period by a majority vote of the full board, vote to reject such an appointment, or has sooner  
39 voted to affirm it. A copy of each notice of appointment shall be posted on the town bulletin  
40 board and website when submitted to the board of selectmen.

41 ii. Notwithstanding any other provision of this act to the contrary, when a vacancy  
42 occurs or will occur on a date certain in the office of fire chief or police chief, and prior to  
43 exercising any authority under section 3(A) of this act, the town manager shall consult with the  
44 board of selectmen as to the criteria and process for appointment.

45 iii. The board of selectmen retains the authority to appoint legal counsel, town  
46 accountant, board of registrars, zoning board of appeals, certain members of the community  
47 preservation committee as set forth by by-law, conservation commission, historical commission,  
48 cultural council, recreation commission, and council on aging.

49 B. To administer the town personnel system, including, but not limited to personnel  
50 by-laws, policies and procedures, rules and regulations, collective bargaining agreements and  
51 employment contracts; the town manager shall also prepare and maintain a current plan  
52 establishing personnel staffing requirements for each town department, excepting school and  
53 library personnel.

54 C. To attend all regular and special meetings of the board of selectmen, unless  
55 absence is approved in advance by the chair of the board of selectmen, and shall have a voice,  
56 but no vote, in all of the board of selectmen's proceedings.

57 D. To assure that a full and complete record of the financial and administrative  
58 activities of the town is kept and rendered as often as may be required by the board of selectmen.  
59 Not less than once a year, a full written report of all town administrative operations during the  
60 period reported on, shall be made available to the public.

61 E. To keep the board of selectmen fully advised as to the needs of the town and  
62 recommend to the board of selectmen and to other elected and appointed town officers and  
63 departments adoption of such measures requiring action by them or by the town meeting as the  
64 town manager may deem necessary or expedient.

65 F. To be responsible for the maintenance and repair, rental and use, of all town  
66 buildings and facilities, excluding those facilities where by law the jurisdiction and control is  
67 vested in another board or department.

68 G. To prepare and present to the board of selectmen an annual operating budget for  
69 the town and develop material for the preparation of a proposed capital improvement plan for the  
70 next 5 fiscal years, with the assistance of any committee that may be created by by-law for such  
71 purposes.

72 H. To assure that a complete inventory of all property of the town, both real and  
73 personal, is kept, excluding property under the control of the library trustees or school  
74 committee.

75 I. To negotiate, on behalf of the board of selectmen, all contracts involving wages,  
76 hours and other terms and conditions of employment and collective bargaining agreements;  
77 provided, however, that all such contracts and agreements shall be subject to the approval of the  
78 board of selectmen.

79 J. To be the chief procurement officer for the town, in accordance with the  
80 provisions of M.G.L. c. 30B, and be responsible for purchasing all supplies and services for all  
81 departments and activities of the town, including awarding and executing contracts therefor. The  
82 town manager shall be certified by the inspector general as a Massachusetts certified public  
83 purchasing official, or receive a similar certification, at the time of initial appointment or within  
84 a reasonable period of time following such appointment. The town manager shall report to the  
85 board of selectmen any contracts signed under the authority of this section.

86 K. To execute warrants for payment of bills and payrolls prepared by the town  
87 accountant in accordance with the provisions of section 56 of chapter 41 of the General Laws,  
88 and to report the same to the board of selectmen at the first meeting following such action;  
89 provided, however, in the event of a temporary or permanent vacancy in the office of the town  
90 manager and assistant town manager, the board of selectmen shall have sole authority to sign  
91 such warrants.

92 L. To see that the provisions of this act, town by-laws, and other votes of the town  
93 meeting and of the board of selectmen which require enforcement by the town manager are  
94 faithfully performed.

95 M. To inquire, at any time, into the conduct and operation of any office or  
96 performance of duties of any town officer, employee, department, or multiple-member body.

97           N.     To attend all sessions of all town meetings and, when authorized by the  
98 moderator, answer questions raised by voters relating to warrant articles and matters over which  
99 the town manager exercises any supervision.

100           O.     To, with the approval of the board of selectmen, reorganize, consolidate, or  
101 abolish, in whole or in part, town departments under the supervision of the town manager,  
102 provide for new town departments, subject to any appropriation required therefor, and provide  
103 for a reassignment of powers, duties and responsibilities among such departments so established  
104 or existing, provided, however, that except as expressly otherwise provided herein, no authority  
105 or responsibility assigned by the general laws may be so reorganized, consolidated or abolished.

106           P.     To facilitate communications, coordination, and operations between and amongst  
107 town departments serving under the town manager, board of selectmen, and other officers and  
108 multiple member bodies elected directly by the voters, and in that regard, shall have authority to  
109 reasonably require appointed and elected officers of the town or their representatives to meet  
110 with the town manager from time to time. The town manager shall have the right to attend and  
111 speak at any meeting of any multiple member body, but shall not have the right to vote.

112           Q.     To seek state, federal, regional and all other grants that may be of benefit to the  
113 town. The town manager shall review and, following notification to the board of selectmen,  
114 approve all grant applications otherwise requiring approval of the board of selectmen.

115           R.     To, with the approval of the board of selectmen and finance committee, transfer  
116 the appropriation of one town department or agency to another, so far as is consistent with the  
117 use for which the funds were voted by the town.

118           S.       To perform any other duties required to be performed by the town manager by  
119 by-law or vote of the board of selectmen. If an assistant town manager is appointed, the town  
120 manager may delegate any of the duties and responsibilities hereunder to such assistant;  
121 provided, however, that the actions of the assistant shall be deemed to be those of the town  
122 manager.

123           T.       To ensure that the board of selectmen is fully informed of the town's emergency  
124 preparedness planning. In time of public danger or emergency, the town manager, in  
125 collaboration with the emergency management director, shall direct and oversee management of  
126 town resources pursuant to any applicable state law, regulation, or other protocol, directive, or  
127 agreement to which the town is a signatory or participant. Should the town manager be  
128 unavailable, the emergency management director shall perform such duties as may be necessary.

129           U.       To take such other action, consistent with this charter, as may be authorized by  
130 vote of the board of selectmen.

131           SECTION 4. Should an assistant town manager be appointed in accordance with section  
132 3(A) of this act, the assistant town manager shall exercise the powers and perform the duties of  
133 the town manager during an absence of the town manager of not more than 15 days; otherwise,  
134 the town manager, with the approval of the board of selectmen, shall by letter filed with the town  
135 clerk and board of selectmen, designate another qualified town

136           officer or employee to serve in such capacity.

137           SECTION 5. Any vacancy in the office of town manager shall be filled as soon as  
138 possible by the Tyngsborough board of selectmen, but, pending such regular appointment, the  
139 board of selectmen shall appoint a qualified town officer, employee, or individual, who may but



140 need not be the assistant town manager, if any, to perform the duties of the office on an acting  
141 basis, and who shall be referred to as the acting town manager. Such temporary  
142 appointment may not exceed 3 months, but no more than 2 additional 3-month renewals  
143 may be approved by the board of selectmen. Compensation for such person shall be set by the  
144 board of selectmen within the amount approved by town meeting for the position of town  
145 manager.

146 SECTION 6. The powers and duties of a temporary or acting town manager under  
147 sections 4 and 5 of this act shall be limited to matters not admitting of delay and shall include  
148 authority to make temporary, emergency appointments or designations to town office or  
149 employment but not to make permanent appointments or designations.

150 SECTION 7. The Tyngsborough board of selectmen may, by a vote of no less than 4 of  
151 its members, terminate the town manager for cause at any time after the opportunity for a hearing  
152 for which the town manager has received at least 10 days prior written notice; the board of  
153 selectmen may place the town manager on paid administrative leave pending such hearing. The  
154 action of the board of selectmen in suspending or removing the town manager shall be final, it  
155 being the intention of this provision to vest all authority and fix all responsibility for such  
156 suspension or removal solely in the board of selectmen.

157 SECTION 8. When a vacancy exists in the office of town manager, the board of  
158 selectmen shall establish a screening committee to review applicants for the position of town  
159 manager; provided, however, that in the alternative, it may adopt a preliminary resolution that a  
160 screening committee is not required, and by a vote of no less than 4 of its members, make a

161 direct appointment of a candidate, including the assistant town manager, if any, meeting the  
162 qualifications set forth in section 1 of this act.

163 If a screening committee is appointed under the first clause of this section, it shall consist  
164 of 5 or 7 persons who live or work in the town, representing to the extent possible a broad  
165 demographic and occupational base. No more than two members of the board of selectmen shall  
166 serve on the committee.

167 A. The screening committee shall review all applications received by it, screening  
168 qualified candidates to the extent permitted by law, and provide for an interview to be conducted  
169 with such number of candidates it deems to be necessary and appropriate.

170 B. The committee shall submit to the board of selectmen the names, in no particular  
171 order, of a minimum of 3 persons whom it has determined to be best suited to perform the duties  
172 of the town manager.

173 C. By majority vote of the entire board of selectmen, one such nominee may be  
174 selected to serve as town manager. Or, if none of the nominees is selected, the board of  
175 selectmen may re-convene a new screening committee or choose an alternative method of  
176 reviewing applicants in accordance with the first paragraph of this section.

177 D. Upon the appointment of a town manager or the appointment of a new screening  
178 committee as set forth in section S(C), the screening committee shall be considered discharged.

179 SECTION 9. The incumbent town administrator in office on the effective date of this act  
180 shall be the first town manager, and shall continue in office until the town manager's  
181 non-reappointment, resignation, retirement, or removal in accordance with the provisions of

182 sections 1 or 7 of this act. At that time, appointment of a new town manager shall be undertaken  
183 in accordance with section 8 of this act.

184 SECTION 10. This act shall take effect upon passage.